IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 22292 of 2004(D)

PETITIONER:

SHAJI GEORGE, AGED 32,
S/O. GEAVARGHESE GEORGE, NELLIVILA
PADINJATTETHIL MANGAD DESOM,
INADIMANGALAM VILLAGE, ADOOR TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)

RESPONDENT:

SALIN THOMAS, D/O. THOMAS
AGED 30, KOCHAMBANATTU HOUSE,
PANNIVIZHA MURI, ADOOR VILLAGE.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 22292 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE JUDGMENT IN OP(DIVORCE) NO.126/03 DT.02.12.03 OF FAMILY COURT, THIRUVALLA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 22292 OF 2004

Dated this the 27th day of June, 2007

JUDGMENT

A petition for divorce filed before the Family Court, Thiruvalla by the petitioner who is the husband of the respondent was ultimately compromised between the parties on the basis of a joint compromise petition dt.29.08.03 filed by the parties before the Family Court. A copy of the above compromise petition is made available for my perusal. It is seen that the parties have agreed for dissolution of marriage by filing a joint statement under Section 10 A of the Indian Divorce Act as amended. The terms are that the petitioner who is the defendant shall pay a sum of Rs.5 lakhs to the minor 2nd plaintiff (the child) towards her claims and against the defendant's father Shaji George. The above amount is in fact the sum deposited by the petitioner in the name of the minor child with the local branch of the Federal Bank and the maturity value of the Fixed Deposit will be Rs.12,14,000/- on 11.18.2016 when the child attains majority. The further condition of the compromise is that the petitioner shall entrust a sum of Rs.8 lakhs by cash to the Vicar of the Parish Church as soon as decree of divorce is passed by the Family Court accepting the compromise petition. It is not disputed before me that both the above conditions have been complied with by

the petitioner. The Family Court actually decreed divorce accepting the compromise petition. Ext.P1 is copy of the judgment of the Family Court. The grievance of the petitioner is regarding the below quoted passages in Ext.P1: " That being so, the child has not every right to claim for getting her share on the property of her father and she is having all rights as a legitimate child and this right cannot been given up by an agreement between the petitioners. No amount is received by the 2nd petitioner on behalf of the minor and the only amount paid for the minor is the amount deposited under FD in the name of the minor. Hence the above clause in the agreement is not binding on the 2nd petitioner and it will not affect the right of the minor to raise claim for getting her share from the property of her father, 1st petitioner or raise any other claim against the 1st petitioner being her father."(page No.7 of Ext.P1) "But it is made clear that entrustment of the amount for maintenance with the 2nd petitioner and deposit of Rs.5,02,658/- in the name of the minor under FD will not deprive minor's right to claim for getting her share on the father's assets or raising any other legitimate claim against 1st petitioner as her father."(Page No.8 of Ext.P1).

2. In this Writ Petition under Article 227 the petitioner seeks expunction of the above quoted passages in Ext.P1 judgment.

3. Heard Sri.George Varghese Kizhakkambalam, learned counsel

for the petitioner and Sri.P.M.Kunjimoideenkutty, learned counsel for the respondent. Sri.George Varghese would submit that the passages sought to be expunge were absolutely unwarranted and therefore there is justification for expunging those passages. Mr.Kunjimoideenkutty per contra would submit that the learned judge of the Family Court has only reminded the parties of the legal provision that a compromise between the parties may not by itself bind the minor child if it is ultimately found that the compromise was not in the interest of the child.

I have heard the rival submissions. Though it is correct to say that by incorporating the passages quoted herein above, the learned judge was only trying to remind the parties of the legal provisions, I feel that to take a decision on the case of a compromise petition, those passages were not very much necessary. The Writ Petition is disposed of, observing so.

PIUS C. KURIAKOSE, JUDGE

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